United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7195

To Be Submitted by
RHONDA AMKRAUT BAYER

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-7195

B P/S

MARTHA WILLIAMS,

Plaintiff-Appellant,

-against-

THE STATE OF NEW YORK and Judges, A. Schulman, Tavormina, H. Cohon, J. Steinberg, M. Stein, L. Sacks, Corso, F. Moritt, Kliegor, A. Marino, S. Welcome and H[illegible]y Bramwell, of Brooklyn Civil Court Judges: William B. Groat, Charles Margett, John E. Cone of the State's Appellate Division of Kings County Judge; Samuel Rabin, former presiding Justice of Appellate Division,

Defendants-Appellees.

APPEAL FROM ORDER OF DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLEES

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Statement

This is an appeal from a decision of the United States District Court for the Eastern District of New York (Neaher, D.J.), dated February 28, 1975, dismissing appellant's complaint.

Questions Presented

1. Whether the District Court properly ordered the complaint dismissed when appellant failed to appear in court after refusing to accept service of the motion papers?

2. Whether state court judges may be liable for damages for acts committed in the exercise of their judicial functions?

3. Whether a state is liable for damages for acts committed by state court judges in the exercise of their judicial functions?

4. Whether the federal judiciary may sit in appellate review of state court judgments rendered in actions over which the federal courts lack subject matter jurisdiction?

Prior Proceedings

Appellant commenced the instant civil action against the City of New York in 1974. By order dated October 18, 1974 the action was dismissed, without prejudice, with leave to renew action as to proper parties (Travia, D.J.).

Thereafter appellant filed an amended complaint, in January, 1975, naming as defendants the State of New York and several state court judges who are the appellees on this appeal.

Appellant sought $500,000 in damages from New York State and from several judges of New York State Courts. She also sought the rectification of alleged wrongs committed by the appellee judges in regard to civil actions she commenced in state court. These alleged wrongdoings formed the basis of the complaint. Plaintiff claimed inter alia that judges granted her opponents numerous adjournments, permitted them to seek court orders without serving her with the moving papers, took two months to decide a motion brought by her, conferred with opposing counsel in her absence, permitted opposing counsel to withdraw a motion and transfer it to another court, permitted opposing counsel to address the court first on a motion brought by this plaintiff, witnessed a forged order signed by opposing counsel, granted motions brought by her opponents, rendered judgments against her which were reversed, granted a motion based on false allegations and failed to act on a complaint. On February 14, 1975 the appellees moved for an order pursuant to Rules 12(b)(6) and 12(b)(1) of the Federal Rules of Civil Procedure to dismiss the complaint on the grounds that it failed

to state a claim upon which relief can be granted and that the court lacked jurisdiction over the subject matter. The appellant did not appear in court and Judge Neaher granted appellees' motion.

Some time during the afternoon of February 14, 1975, Bruce Fader, Law Clerk to Judge Neaher informed appellees' attorney, via telephone, that appellant had appeared in Judge Neaher's Chambers that afternoon, that she was shown appellees' moving papers, claimed that she had never received them and noted that the affidavit of service indicated that copies of the moving papers had been mailed to her at 235 Ralph Avenue when she resided at 234 Ralph Avenue. Appellees' attorney was told to send appellant, and did send her, by certified mail, another copy of the moving papers with a letter informing her that the matter was set down for February 28, 1975 at 10 o'clock in the forenoon.

On February 21, 1975 appellees' attorney received an affidavit in opposition to defendants' motion from appellant based on her reading of the moving papers in Judge Neaher's Chambers. In this affidavit appellant claimed that she first learned of appellees' motion in the afternoon of February 14, 1975. She did not specify how she learned of the motion if she had never received a copy of the moving papers from appellees.

On February 28, 1975 appellant again failed to appear in court, the defendants' motion was granted and an order dismissing the complaint was entered.

Subsequently, the New York Post Office returned to appellees' attorney the copy of the moving papers and cover letter sent to appellant at the correct address since it remained unclaimed after appellant was given second notice.*

On March 31, 1975 a civil appeal preargument statement was received.** Appellant's brief was received on May 1, 1975.***

POINT I

APPELLEES' MOTION TO DISMISS THE COMPLAINT WAS PROPERLY BEFORE THE COURT BELOW

Appellant's contention that she was never served with appellees' moving papers is factually unsupportable. Her

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* Respondents' Exhibit 1. This exhibit was certified by the District Court and filed in this Court on May 23, 1975.

** This statement indicated that the notice of appeal was filed on March 21, 1975.

*** Respondents have not received a copy of the Record on Appeal and are, therefore, unable to indicate appropriate references to the record.

claim that she appeared in Judge Neaher's Chambers on the afternoon on February 14, 1975 upon somehow learning of the motion while maintaining that she never received the moving papers is highly dubious at best. However, it is incontrovertible that a second copy of the moving papers was mailed to her at the correct address,* and returned to appellees' attorney when, after being twice notified, appellant refused to claim them from the Brooklyn, New York Post Office.

In addition, appellant was permitted to read the moving papers in Judge Neaher's Chambers and had the opportunity, of which she took advantage, to file a reply in opposition to the motion.

Service by mail is permitted under the Federal Rules of Civil Procedure, Fed. R. Civ. P. 5(b). Since appellant was properly served the motion was properly before the District Court and its order should not be disturbed.

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* The address on the envelope returned to appellees' attorney is the same address given on the complaint and given by appellant in her appellate brief, p. 3.

POINT II

THE COMPLAINT WAS PROPERLY DISMISSED BY THE DISTRICT COURT.

A. State Court Judges are absolutely Immune from Civil Liability for Acts Performed by them in Their Judicial Capacities.

Appellant sought an award of damages against several New York State judges for alleged wrongdoings in the exercise of their judicial functions.

The doctrine of judicial immunity prevents the recovery of damages against a judge on account of action taken in the exercise of his judicial responsibilities. The insulation of members of the judiciary from civil suits has consistently been given full effect by the Supreme Court of the United States since its adoption of the doctrine in Bradley v. Fisher, 80 U.S. 335 (1872).

The Court reaffirmed this holding in Pierson v. Ray, 386 U.S. 547 (1966), a case taken by the Court "...to consider whether a local judge is liable for damages under § 1983 for

an unconstitutional conviction...." Pierson v. Ray, supra at 551. The Court stated:

> "We find no difficulty in agreeing with the Court of Appeals that Judge Spencer is immune from liability for his role in these convictions. The record is barren of any proof or specific allegation that Judge Spencer played any role in these arrests and convictions other than to adjudge petitioners guilty when their cases came before his court. Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher, 80 U.S. 335 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it is not for the protection or benefit of a malicious or corrupt judge, but for the protection or benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences. (Scott v. Stansfield, L.R. BEX. 220, 223 [1868], quoted in Bradley v. Fisher, supra, 349-350)." Pierson v. Ray, supra, 553-554.

More recently the Court has declared that "Judges, like executive officers with discretionary functions, have been held absolutely immune regardless of their motive or good faith". Doe v. McMillan, 412 U.S. 306, 319 (1973). Accord, Wood v. Strickland, ___ U.S. ___, 43 U.S.L.W. 4293 (Feb. 18, 1975).

Cf. Dombrowski v. Eastland, 387 U.S. 82 (1967); Whelden v. Wheeler, 373 U.S. 647 (1963); Tenney v. Brandhove, 341 U.S. 367 (1951).

The federal judiciary has never hesitated to apply the doctrine of judicial immunity in actions brought against a judge. E.G. Blouin v. Dembitz, 489 F. 2d 488 (2d Cir. 1973); Fanale v. Sheehy, 385 F. 2d 866 (2d Cir. 1967); Edwards v. New York, 314 F. Supp. 469 (S.D.N.Y. 1970); Law Students Civil Rights Research Council, Inc. v. Wadmond, 299 F. Supp. 117 (S.D.N.Y. 1969) affd. 401 U.S. 154 (1971); Stambler v. Dillon, 302 F. Supp. 1250 (S.D.N.Y. 1969); Garfield v. Palmieri, 193 F. Supp. 137 (S.D.N.Y. 1961), affd. 297 F. 2d 526 (2d Cir. 1962), cert. den. 369 U.S. 871 (1962); Garfield v. Palmieri, 193 F. Supp. 582 (E.D.N.Y. 1960), affd. 290 F. 2d 821 (2d Cir. 1961), cert. den. 368 U.S. 827 (1961); Morgan v. Sylvester, 125 F. Supp. 380 (S.D.N.Y. 1954) affd. 220 F. 2d 758 (2d Cir.), cert. den. 350 U.S. 867 reh. den. 350 U.S. 919 (1955).

Accordingly, the complaint was properly dismissed as against appellee judges since the acts complained of were performed by them in their judicial capacities, and hence they are absolutely immune from civil suit.

B. Appellant's Request for Damages from New York State is Barred by the Eleventh Amendment.

Appellant also sought an award of damages against the State of New York. It appears that the claim against the state was advanced on the grounds that the judicial conduct complained of was performed by state officials.

However, it is well established that the Eleventh Amendment bars suits against the state. Scheur v. Rhodes, 416 U.S. 232, 237 (1974); Edelman v. Jordan, 415 U.S. 651 (1974), reh. den. 41 U.S. 1000 (1974); Employees v. Dept. of Public Health and Welfare, 411 U.S. 279 (1973); Parden v. Terminal R. Co., 377 U.S. 184 (1964); Great Northern Life Insurance Co. v. Read, 322 U.S. 47 (1945); Duhne v. New Jersey, 251 U.S. 311 (1920); Smith v. Reaves, 178 U.S. 436 (1900); Hans v. Louisiana, 134 U.S. 1 (1890). The jurisdictional power of the federal courts does not extend to suits brought to recover damages from a state. E.g., Great Northern Life Insurance Co. v. Reed, supra; Smith v. Reaves, supra.

Although by its terms the Eleventh Amendment bars suits against the state only by citizens of other states, it is clear that a state is immune from suits brought in federal

courts by its own citizens as well:

> "The inherent nature of sovereignty prevents actions against a state by its own citizens without consent." Great Northern Life Insurance Co. v. Read, supra at 51.

Accord, Edelman v. Jordan, supra; Employees v. Dep't. of Public Health and Welfare, supra; Smith v. Reeves, supra; Hans v. Louisiana, supra.

It is equally clear that the state's immunity is not defeated upon the suggestion that the case is one which arises under the Constitution or laws of the United States. E.g., Smith v. Reeves, supra.

Accordingly, the complaint was properly dismissed as against New York State since the state has not consented to a suit for money damages in federal court.

C. The Additional Relief Sought Could Not be Granted.

In addition to an award of damages, appellant sought the "rectification of said wrongs"* and requested that the

* Complaint, p. 5.

federal court undertake the periodic investigation of the performances of judges and attorneys. The Court lacks the authority to grant this relief:

> "[W]e hold that under the principle known as comity a federal district court has no power to intervene in the internal procedures of the state courts." Wallace v. Kern, 481 F. 2d 621 (2d Cir. 1973), cert. den. 414 U.S. 1135 (1974).

The federal district court possess no power to sit in appellate review of state court judgments. Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281 (1970); Lecci v. Cahn, 493 F. 2d 826 (2d Cir. 1974), United States ex rel. Cataliotti v. Mancusi, 309 F. Supp. 1182 (S.D. N.Y. 1970). Moreover,

> "The Civil Rights Act was not designed to be used as a substitute for the right of appeal..." Coogan v. Cincinnati Bar Ass'n, 431 F. 2d 1209, 1211 (6th Cir. 1970).

To the extent that appellant complained of the final judgments of any state court, she is precluded by res judicata from relitigating the issues involved in her state court proceedings, or any issues which might have been presented. E.g., Thistlewaite v. City of New York, 497 F. 2d 339 (2d Cir. 1974).

Lastly, the complaint is barren of any suggestion that a federal question was involved in the challenged state court proceedings which involved malpractice suits, a suit against an attorney for the collection of excessive fees, and a suit for damages against the New York City Housing Authority.

To ask the federal judiciary to rectify the alleged wrongs committed by judges in presiding over these suits is tantamount to asking the Court to decide these suits over which the federal court has no jurisdiction.

The general allegation that the state courts' decisions and actions were erroneous is insufficient to state a federal claim. Therefore, no federal question was presented by appellant's complaint, nor could the complaint be construed as alleging the deprivation of any federally secured right.

CONCLUSION

THE ORDER OF THE DISTRICT COURT DISMISSING THE COMPLAINT SHOULD BE AFFIRMED IN ALL RESPECTS.

Dated: New York, New York
May 28, 1975

Respectfully submitted,

LOUIS J. LEFKOWITZ
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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JEANETTE MARCELINA , being duly sworn, deposes and says that s he is employed in the office of the Attorney General of the State of New York, attorney for Defendants-Appellees herein. On the 28th day of May , 1975 , s he served the annexed upon the following named person :

Ms. Martha Williams
234 Ralph Avenue
Brooklyn, New York 11233

Plaintiff-Appellant pro se
~~Attorney~~ in the within entitled appeal by depositing
= three
a true and correct copies thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Plaintiff-Appellant pro se ~~Attorney~~ at the address within the State designated by her for that purpose.

Jeanette Marcelina

Sworn to before me this
28th day of May , 1975

Dpty Rhonda Ankrant Beyer
Assistant Attorney General
of the State of New York